

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Delvin Lloyd Drinkall,

Case No. 19-31858

Debtor.

Chapter 11

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Delvin Lloyd Drinkall,

Plaintiff,

v.

Adv. Proc. No. 19-03072

Corry & Associates, and  
Robert J. Corry, Jr.,

Defendants.

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**CITED CASE LIST FOR ORDER**

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At Saint Paul, Minnesota.

The Court cited the following cases and statutes in the discussion as stated on the record on May 7, 2020. [Dkt. No. 34].

Fed. R. Bank. P. 9024

Fed. R. Civ. P. 60(b)

Sellers v. Mineta, 350 F.3d 706, 716 (8th Cir. 2003)

Giles v. Saint Luke's Northland-Smithville, 908 F.3d 365, 368 (8th Cir. 2018)

IBEW, Local Union No. 545 v. Hope Elec. Corp., 293 F.3d 409, 415 (8th Cir. 2002)

Williams v. York, 891 F.3d 701, 706 (8th Cir. 2018)

Jones v. Swanson, 512 F.3d 1045, 1048 (8th Cir. 2008)

MIF Realty Ltd. P'ship v. Rochester Assocs., 92 F.3d 752, 756 (8th Cir. 1996)

**I. The Defendants Demonstrate Grounds Under Rule 60(b)(1) To Vacate The Default Judgment To Consider The Full Merits Of The Case.**

Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993)

Giles, 908 F.3d at 368

Gaydos v. Guidant Corp. (In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.), 496 F.3d 863, 866 (8th Cir. 2007)

Feeney v. AT&E, Inc., 472 F.3d 560, 563 (8th Cir. 2006)

City of Duluth v. Fond Du Lac Band of Lake Superior Chippewa, 702 F.3d 1147, 1152 (8th Cir. 2013)

**A. The Defendants Have Meritorious Defenses.**

**1. The Defendants Demonstrate A Meritorious Defense They Followed The Plaintiff's Instructions.**

**2. The Defendants Present A Meritorious Defense To The Ownership Of A Portion Of The Contested Funds.**

11 U.S.C. § 542(a)

11 U.S.C. § 363

11 U.S.C. § 541(a)(1)

Brown v. Pyatt (In re Pyatt), 486 F.3d 423, 427 (8th Cir. 2007)

Stephenson v. El-Batrawi, 524 F.3d 907, 914 (8th Cir. 2008)

Johnson v. Dayton Elec. Mfg. Co., 140 F.3d 781, 785 (8th Cir. 1998)

**3. There Is A Meritorious Defense To The Judgment Amount.**

**B. Vacating The Judgment Poses No Danger Of Prejudice To The Plaintiff.**

Giles, 908 F.3d at 368

Stephenson, 524 F.3d at 915

Johnson, 140 F.3d at 785

**C. The Length Of Delay And Its Potential Impact On Judicial Proceedings Is Not Prejudicial.**

Giles, 908 F.3d at 368

Guidant Corp., 496 F.3d at 866-67

Aldrich v. Belmore (In re Belmore), 226 B.R. 433, 435 (Bankr. D. Idaho 1998)

Jones Truck Lines v. Foster's Truck & Equip. Sales (In re Jones Truck Lines), 63 F.3d 685, 687 (8th Cir. 1995)

**D. The Defendants Demonstrate A Reason For The Delay.**

Conway v. Heyl (In re Heyl), 609 B.R. 194, 200 (B.A.P. 8th Cir. 2019)

Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 463 (8th Cir. 2000)

Chorosevic v. MetLife Choices, 600 F.3d 934, 947 (8th Cir. 2010)

Giles, 908 F.3d at 368

In re Motors Liquidation Co., 598 B.R. 744, 758 (Bankr. S.D.N.Y. 2019)

In re Hills Stores Co., 167 B.R. 348, 351 (Bankr. S.D.N.Y. 1994)  
Weisfelner v. Blavatnik (In re Lyondell Chem. Co.), 543 B.R. 400, 410 (Bankr. S.D.N.Y. 2016)  
Fed. R. Bankr. P. 7004  
In re Kilmer, 501 B.R. 208, 212 (Bankr. S.D.N.Y. 2013)  
In re Martin-Trigona, 763 F.2d 503, 505 (2d Cir. 1985)

**E. The Defendants' Delay In Filing The Motion To Vacate The Default Judgment Does Not Demonstrate A Lack Of Good Faith.**

Giles, 908 F.3d at 369  
Johnson, 140 F.3d at 784  
Guidant Corp., 496 F.3d at 867

**F. There Are Grounds For Mistake Or Excusable Neglect Or Both.**

**II. Rule 60(b)(6)**

**III. The Judgment Will Be Vacated If The Defendants Pay Certain Attorney Fees And Costs To The Plaintiff.**

In re Strom, 921 F.2d 836, 840-81 (8th Cir. 1991)  
Thorpe v. Thorpe, 364 F.2d 692, 694 (D.C. Cir. 1966)  
Powerserve Int'l, Inc. v. Lavi, 239 F.3d 508, 515 (2d Cir. 2001)  
Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. La. Hydrolec, 854 F.2d 1538, 1546-47 (9th Cir. 1988)  
SEIU Nat'l Indus. Pension Fund v. Hamilton Park Health Care Ctr., Ltd., 304 F.R.D. 65, 71 (D.D.C. 2014)  
Henderson v. Wishinski, No. 95 CIV. 5059(KMW), 1997 WL 83413, at \*3 (S.D.N.Y. Feb. 27, 1997)

Dated: *May 11, 2020*

By the Court:

*/e/ William J. Fisher*

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William J. Fisher  
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on <i>05/11/2020</i> Lori Vosejpka, Clerk, by DT
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